



November 7, 2006

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Mr. Jim LaSpina
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RE: Pre-Preliminary Draft Industrial Stormwater NPDES Permit

Dear Mr. LaSpina:

The purpose of this letter is to provide joint comments from the Port of Seattle and the Washington Public Ports Association ("the Ports") on the Pre-Preliminary Draft Industrial Stormwater NPDES Permit (the "Pre-Preliminary Draft"). We appreciate the opportunity to submit these comments.

The Ports would like to focus our comments today on just one central issue, and set aside for the moment the many questions of interpretation and need- for clarification that arose during our reading of the Pre-Preliminary Draft. We hope you will provide us with another opportunity in the future (perhaps at the "Preliminary Draft" stage) to provide more detailed comments and suggest language to clear up some of the confusion arising from the Permit's new formatting and language.

The central issue concerns the benchmark values, action levels and discharge limitations contained in Condition 85, particularly the way in which these are combined with the Corrective Actions contained in Condition S8. The Ports are greatly concerned that Ecology is using the benchmark values and action levels in a way that is contrary to the Legislature's direction, as established in ESSB 6415, passed in 2004. Moreover, the resulting system seems to be designed for failure. We believe there are two essential questions that Ecology has failed to address:

- Are these the right parameters/numbers?
- Are the numbers (benchmark values and action levels) being used in a way that is legally correct, sensible and effective?

Are These the Right Parameters/Numbers?

The 2002 Industrial Stormwater General Permit (the "2002 Permit") introduced the concept of benchmark values and action levels. We understand that the particular benchmark values and action levels laid out in the 2002 Permit were established in a somewhat arbitrary fashion, without a great deal of information concerning whether they were the "right numbers." By "right numbers," we mean that the correct parameters are used, and the correct trigger levels are set, to achieve the twin goals of assessing a facility's BMP performance and evaluating whether a particular discharge has a reasonable potential to violate water quality standards. Achieving these twin goals means that the numbers must be both technology-based (in order to assess BMP performance), and water-quality based. It was our expectation that, prior to the issuance of the next permit (i.e., this Pre-Preliminary Draft), Ecology would further evaluate these numbers and produce a more technically sound regime. Instead, Ecology appears to have accepted without analysis that these are the right numbers.

The Ports believe that there are numerous problems with continued use of both the turbidity and the metals parameters, and that they need to be evaluated now. For example, most technical experts would agree that total suspended solids is a better parameter to use, rather than turbidity. Also, there are serious questions as to whether 26-50 NTU is an appropriate level to achieve the twin goals. Similarly, the issue of what are the "right numbers" for zinc, copper and lead is highly contentious, in that significant questions exist regarding the effect of dissolved metals in the environment, as well as what levels they should be set at. The Ports urge Ecology to take a step back now and perform a rigorous scientific and regulatory review of what are the "right numbers."

Are the Numbers Being Used Correctly?

The Ports are concerned that the benchmark values are being used in this permit as de facto effluent limitations. Effluent limitations are defined as "any restriction imposed by the Director on quantities, discharge rates, and concentrations of pollutants." 40 CFR 122.2. Condition S8 of this permit imposes enforceable consequences, such as a requirement to implement additional BMPs, when the benchmark values are not achieved. See, e.g., S8.A.1; S8.B.2; S8.C.2; S8.D.1. In our view, this means they are de facto effluent limitations and therefore contrary to the legislative mandates of RCW 90.48.555, which requires that Ecology make a determination of reasonable potential to cause or contribute to the violation of an applicable water quality standard before imposing an effluent limitation. Ecology has made no such determination.

An alternative approach would be to use the benchmarks as they were intended: as true indicators of a problem. Rather than prescribing specific corrective actions, the Permittee should be responsible to assess current conditions and make any changes necessary. By applying the SWMM and utilizing readily-available technical expertise, the Permittee should determine what precisely is the problem, and what is the best approach to eliminate it. Although this will frequently involve many of the same steps as laid out in Condition S8, the difference is the use of best professional judgment by the Permittee. Documentations of these actions would, of course, be necessary.

If Ecology persists in the current approach, then we would ask that you develop a management program that at least makes it possible for Permittees to comply. Two improvements would help make the program more sensible and effective. These are:

Rolling annual monitoring:

Because stormwater quality is highly variable, results from a single sample are not necessarily an indicator of BMP effectiveness. A single result may be less related to BMP performance and more determined by such factors as storm event intensity, time lapse of sampling the storm event, various aspects of the sampling protocol, etc. A rolling annual geometric mean of monitoring data, not individual sampling events, should be used to trigger Level Two, Level Three and Level Four adaptive management actions.

Scheduling and Timing:

The Pre-Preliminary Draft doesn't allow sufficient time between Corrective Action Levels 2, 3 and 4 to evaluate what is needed, budget for improvements and, finally, to assess the improvements. We believe a better approach would be to follow something like the new schedule (attached). This schedule would have the following benefits:

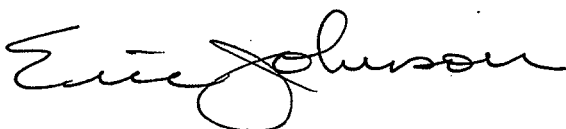
- Provide a clear path of compliance for Permittees
 - o Step 1: Results indicate the need for additional action
 - o Step 2: Identify potential sources
 - o Step 3: Take actions & complete corrective action
 - o Step 4: Sample to verify results of corrective actions
 - o Step 5: Start next action if results indicate problem
- Provide an incentive to Permittees to stay at lowest level possible
- Involve Ecology only when needed (if Permittee actions are not sufficient)
- Allow Permittees to plan and budget for Corrective Actions and Funding

Permittees should also have the option to step out of the Corrective Action Scenario at any point and begin negotiations with Ecology to resolve permit compliance issues differently. A Gantt Schedule is attached to further explain how goals listed above could be achieved.

Thank you for this opportunity to comment on the Pre-Preliminary Permit. If you have any questions concerning the contents of this letter, please contact Marilyn Guthrie for the Port of Seattle ((206) 728-3347).



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